

PT 99-9

Tax: PROPERTY TAX
Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

APOSTOLIC CHURCH OF THE LORD)		
JESUS CHRIST)	A.H. Docket #	98-PT-0027
Applicant)		
)	Docket #	97-41-27
v.)		
)	Parcel Index #	07-31-302-006
THE DEPARTMENT OF REVENUE)		07-31-302-007
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Sharon Shanahan appeared on behalf of Rev. Elbert L. Tolley and the Apostolic Church of the Lord Jesus Christ.

Synopsis:

The hearing in this matter was held on June 1, 1998, at 2309 West Main Street, Marion, Illinois to determine whether or not Jefferson County Parcel Index Nos. 07-31-302-006 and 07-31-302-007 qualified for exemption from real estate taxation for the 1997 assessment year. Jefferson County Parcel Index No. 07-31-302-006 is a vacant grassy lot. Jefferson County Parcel Index No. 07-31-302-007 is improved with a church sanctuary building and also a separate building known as the church basement.

Rev. Elbert L. Tolley, pastor of the Apostolic Church of the Lord Jesus Christ (hereinafter referred to as the “Church”) was present and testified on behalf of himself and the church.

The issues in this matter include, first, whether the church is a religious organization; secondly, whether the church owned these parcels during the 1997 assessment year and finally, whether the church used these parcels for school, religious, or exempt purposes during the 1997 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the church is a religious organization. It is also determined that Rev. Elbert L. Tolley and Hazel E. Tolley, his wife, owned the parcels here in issue during the 1997 assessment year. It is further determined that Jefferson County Parcel Index No. 07-31-302-007 and the buildings thereon were used for religious purposes during the 1997 assessment year. Finally, it is determined that Jefferson County Parcel Index No. 07-31-302-006 which is the vacant lot was used primarily for parking during the 1997 assessment year.

It is therefore recommended that since Jefferson County Parcel Index No. 07-31-302-007 and the buildings thereon were used for religious purposes they are exempt from real estate taxation for the 1997, assessment year. It is further recommended that since Jefferson County Parcel Index No. 07-31-302-006 was primarily used as a parking lot, and the statutory provision exempting parking lots requires ownership by an exempt organization, said parcel shall remain on the tax rolls for the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that Jefferson County Parcel Index No. 07-31-302-006 did not qualify for exemption and also that Jefferson County Parcel Index No. 07-31-302-007, the sanctuary building, and the land on which it stands qualified for exemption, while the 30 foot by 40 foot basement building, and the remainder of the parcel did not qualify

for exemption for the 1997 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On October 10, 1997, the Jefferson County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcels here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On February 26, 1998, the Department advised the church that it was denying the exemption of Parcel Index No. 07-31-302-006 and approving the exemption of the sanctuary building and the land on which it stands located on Parcel Index No. 07-31-302-007. The Department also notified the applicant that it was denying the exemption of the 30-foot by 40-foot basement building, the land on which it stands and the remaining area of Parcel Index No. 07-31-302-007 for the 1997 assessment year. (Dept. Ex. No. 3)

4. By a letter dated March 16, 1998, Rev. Tolley requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 1, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. During 1989 Rev. Tolley and some people in Mt. Vernon formed the church. (Tr. p. 8)

7. On December 10, 1990, Rev. Elbert L. Tolley and Hazel E. Tolley, his wife purchased the two parcels here in issue from the Illinois District Council of the Assemblies of God. At the time that Rev. and Mrs. Tolley purchased these parcels there were very few persons attending the church. The Tolleys took title to the property in their names as joint tenants. (Tr. pp. 9 & 10, Dept. Ex. No. 2G)

8. I take Administrative Notice of the Department's determination in Docket No. 91-41-15 in which the Department determined that Jefferson County Parcel No. 07-31-302-006 did not qualify for exemption. In that Docket No., the Department also determined that the church sanctuary building and the land on which it stands located on Jefferson County Parcel Index No. 07-31-302-007 did qualify for exemption while the 30 foot by 40 foot basement building and the

remainder of Jefferson County Parcel Index No. 07-31-302-007 did not qualify for exemption. (Dept. Ex. No. 2J)

9. The church sanctuary building is a one-story structure located on Jefferson County Parcel Index No. 07-31-302-007. It contains the church sanctuary and two rest rooms. The church basement building, which is also on this parcel, is a one-story structure which is built at right angles to the sanctuary building. The church basement building contains two Sunday school rooms, a fellowship hall, and kitchen area. (Dept. Ex. No. 2I)

10. The sanctuary building has only been used for church services since Rev. and Mrs. Tolley acquired it. It has not been rented out or used for anything other than church or religious purposes. During the calendar year 1997, Rev. Tolley held religious services for the church in the sanctuary building on Sunday mornings at 10:30 A.M. and on Sunday evenings at 6:30 P.M. Religious services were also held there during 1997 on Friday evenings at 7:30 P.M. Average attendance at the Sunday morning worship services during 1997 was 18 persons. (Tr. pp. 10-12 & 21)

11. The church basement was used for Sunday school classes as well as fellowship activities for the persons attending the church. (Tr. pp. 13, 14, & 22)

12. Rev. Tolley explained that the primary use of Jefferson County Parcel Index No. 07-31-302-006, the vacant grassy lot, was for parking during 1997. Across the street from the parcels here at issue are tennis courts. Persons who use the tennis courts park on the street. Consequently, persons going to religious worship services or other activities at the church, park on Jefferson County Parcel Index No. 07-31-302-006. During good weather in 1997, on several occasions, open-air evangelistic services were held on parcel index No. 07-31-302-006. The primary use of this parcel during 1997, however, was for parking. (Tr. pp. 24-29)

13. Rev. Tolley testified that the church does not make any payment to him to use the two parcels here in issue. Rev. Tolley pays the mortgage on these two parcels and also pays for all utilities provided to the parcels in issue and the buildings thereon. (Tr. p.29, Appl. Ex. No. 4)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I take Administrative Notice of the Department's decision in Docket No. 91-41-15 in which it was determined that the church is a religious organization.

With regard to Jefferson County Parcel Index No. 07-31-302-007, the evidence clearly showed that Rev. Tolley allowed the church to use this parcel and the buildings thereon for religious worship and Sunday school. A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). Since Rev. Tolley pays the mortgage on this parcel and the utilities and does not charge the church rent to use the buildings on this parcel it cannot be said that he is leasing or otherwise using for profit the sanctuary building and the basement. See American National Bank v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993), and Victory Church v. Department of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994).

I therefore conclude that Jefferson County Parcel Index No. 07-31-302-007 and the buildings thereon qualified for exemption during the 1997 assessment year as being used for religious purposes.

Concerning Jefferson County Parcel Index No. 07-31-302-006, 35 ILCS 200/15-125 exempts certain property from taxation as follows:

PARKING AREAS, NOT LEASED OR USED FOR PROFIT, WHEN USED AS A PART OF A USE FOR WHICH AN EXEMPTION IS PROVIDED BY THIS CODE AND OWNED BY ANY SCHOOL DISTRICT, NON-PROFIT HOSPITAL, SCHOOL, OR RELIGIOUS OR CHARITABLE INSTITUTION WHICH MEETS THE QUALIFICATIONS FOR EXEMPTION, ARE EXEMPT. (EMPHASIS SUPPLIED)

Rev. Tolley testified emphatically that although this parcel was incidentally used for open-air evangelistic meetings, its primary use during 1997 was for parking. In the situation where the property as a whole was used for both exempt and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is

only incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), and MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Clearly, parking lots used by religious organizations must be owned by those religious organizations. Consequently, Jefferson County Parcel Index No. 07-31-302-006, which was primarily used for parking, did not qualify for exemption during the 1997 assessment year.

I therefore recommend that Jefferson County Parcel Index No. 07-31-302-007 and the buildings thereon be exempt from real estate taxation for the 1997 assessment year.

It is further recommended that Jefferson County Parcel Index No. 07-31-302-006 remain on the rolls and be assessed to Rev. Elbert L. Tolley and Hazel E. Tolley, his wife, the owners thereof for the 1997 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 26, 1999